

Agenda

Item #2



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members
From: Jonathan Wayne, Executive Director
Date: June 20, 2008
Re: Build Maine PAC

Build Maine PAC has requested a waiver of a late filing penalty of \$903. The political action committee (PAC) was required to file a campaign finance report on Friday, May 30. The report was filed three days late on Monday, June 2. The amount of the preliminary penalty based on the formula in statute is \$903.

The PAC is organized by the Associated General Contractors of Maine. Its director is John Butts. He requests a waiver for a number of reasons including that he did not receive an e-mail reminder from the Commission staff and the organization's internal electronic reminder system did not work.

PACs are required to file seven campaign finance reports per year. I have attached the filing schedule which is also available on the Commission's website. It is the PAC's responsibility to keep track of these deadlines, as Mr. Butts concedes. The PAC law does not require the Commission staff to send out reminders of deadlines, but the practice of the staff is to send out two important reminders:

- the staff sends an e-mail to all PACs before each filing deadlines.
- If, on the day of the filing deadline, a PAC has not filed a report, the Commission's PAC/Party/Lobbyist Registrar, Jeremy Brown, telephones the PAC to remind it of the deadline.

Late Filing by Build Maine PAC

On May 22, 2008, about one week before the deadline, Jeremy sent out the attached e-mail to all PACs. The addressees were included in a bcc. The e-mail was sent to John Butts. (His e-mail address is noted on the attached e-mail.) Mr. Butts theorizes that the e-mail may have been intercepted by his spam filter which did not recognize Jeremy Brown's e-mail address. If that occurred, his failure to receive the e-mail was not due to an error of the Commission staff, but rather the association's management of its e-mail system.

May 30, 2008 was the filing deadline for about 125 PACs and about 500 candidates. The Commission staff makes its best effort to telephone all PACs and candidates who have not filed a campaign finance report on the filing deadline. In some cases, we cannot contact filers until the next business day. On May 30, I asked Jeremy to get involved with telephoning numerous candidates who had not filed their reports. Even though this

task is not within his normal job responsibility, he acquiesced. In addition to these candidates, during the course of May 30, Jeremy called about 20 PACs who were running late in filing their reports. By the end of the day, he had not called about five PACs (including Build Maine). He called them on Monday, June 2.

The staff is not required to make telephone calls to candidates or PACs who have not filed their reports, but we make those calls to procure timely disclosure for the public and to minimize any late-filing penalties for candidates and PACs. In the future, if a filing deadline falls on Friday, Jeremy will make it a very high priority to telephone all PACs on the deadline rather than wait until the following Monday. In our view, however, this practice should be viewed as a courtesy by the Commission staff and not as a legal requirement.

Mitigating Circumstances

The Election Law sets forth mitigating factors for waiving a late filing penalty by a PAC:

The commission may waive a penalty if it is disproportionate to the level of experience of the person filing the report or to the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

- A. A valid emergency of the committee treasurer determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part;
- B. An error by the commission staff; or
- C. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. (21-A M.R.S.A. § 1020-A)

In the view of Commission staff, the \$903 penalty is excessive because it is disproportionate to the harm suffered by the public for late disclosure. The report was filed on the next business day. There four more months before the general election. The staff would be comfortable with a significant reduction of the amount of the penalty.



2008 FILING SCHEDULE For Political Action Committees

PRIMARY ELECTION: JUNE 10, 2008		GENERAL ELECTION: NOVEMBER 4, 2008
TYPE OF REPORT	FILING DEADLINE (BY 11:59 P.M.)	REPORT PERIOD
April Quarterly	April 10, 2008	January 6, 2008 – March 31, 2008
11-Day Pre-Primary*	May 30, 2008	April 1, 2008 – May 27, 2008
42-Day Post-Primary**	July 22, 2008	May 28, 2008 – July 15, 2008
October Quarterly	October 10, 2008	July 16, 2008 – September 30, 2008
11-Day Pre-General*	October 24, 2008	October 1, 2008 – October 21, 2008
42-Day Post-General	December 16, 2008	October 22, 2008 – December 9, 2008
January Quarterly	January 15, 2009	December 10, 2008 – January 5, 2009

* PACs are required to file an 11-Day Pre-Primary and an 11-Day Pre-General Election Report.

** PACs do not have to file a July Quarterly Report in 2008 but must file a 42-Day Post-Primary Election Report.

24-HOUR REPORTS

24-HOUR REPORT PERIOD (13 DAYS BEFORE THE ELECTION)	WHAT TO REPORT	WHEN TO FILE THE REPORT
Primary: May 28 – June 9, 2008 General: October 22 – November 3, 2008	Any single expenditure of \$500 or more. Orders placed with or obligations made to vendors for goods or services are considered expenditures at the time the obligations are made. Expenditures listed in 24-Hour Reports must be included in the next regular campaign finance report.	Within 24 hours, including Saturdays and Sundays, of making the expenditure, incurring the obligation, or placing the order and can be filed via the PAC electronic filing website.

IMPORTANT INFORMATION

All regular campaign finance reports are due by 11:59 p.m. on the due date. PAC treasurers must enter the required information and click "File Report" by 11:59 p.m. on the filing deadline. The filing deadline for a 24-Hour Report depends on the time and date of the expenditure.

Commission staff will be available until 5:00 p.m. on filing deadlines to offer assistance to political action committees. Failure to seek out timely assistance from staff regarding the filing of reports will not be considered a mitigating circumstance if the report is filed late.

Brown, Jeremy J

From: Brown, Jeremy J
Sent: Thursday, May 22, 2008 2:36 PM
To: Brown, Jeremy J
Cc: Wayne, Jonathan; Lavin, Paul
Subject: May 30th PAC Filing Deadline

All,

I'm writing to give everyone a brief reminder that the next PAC filing deadline is quickly approaching. All PACs will need to file the May 30th, 11 day pre-primary report, covering activity from April 1st through May 27th. This report is due NLT 11:59 p.m. on Friday May 30th. **Please note that this report is required by ALL PACs not just those participating in the primary election.**

Also, please be aware of the 24 hour reporting requirements between May 28th and June 9th. More information can be found on the filing schedule I sent out last time or at http://mainegov-images.informe.org/ethics/pdf/forms/2008/pac/filing_schedule.pdf. As always if you have any questions feel free to get in touch with me.

For those of you experiencing balance issues, I have not forgotten about you. I'm slowly but surely working through the stack people who have requested assistance with straightening out their account balances. Unfortunately this is an election year so, I'm working through them a little more slowly that I'd like. If I have not been in touch with you yet, I will be soon.

Again, should you have any questions now or in the future please don't hesitate to call me.

Respectfully,

Jeremy J. Brown

PAC, PARTY & LOBBYIST REGISTRAR

STATE OF MAINE

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PHONE: (207) 287-6221

FAX: (207) 287-6775

EMAIL: jeremy.j.brown@maine.gov

WEB: www.maine.gov/ethics

Bcc: 'abragdon@roadrunner.com'; 'alec@indyvoter.org'; 'amaclean@mainemed.com'; 'amy.leeman@cmpco.com'; 'andrec@adelphia.net'; 'ann.woloson@verizon.net'; 'arobinson@preti.com'; 'astuttle@sanfordmaine.org'; 'bigime@aol.com'; 'bobsmith@sebasco.com'; 'bruce_roy@verizon.net'; 'bsmith@equalitymaine.org'; 'buildingtrades@hotmail.com'; 'burleigh@roadrunner.com'; 'cb7700@hotmail.com'; 'chuckquintero@gmail.com'; 'cindybutts@aol.com'; 'clarkjm@netzero.com'; 'compliance@dga.net'; 'contact@actblue.com'; 'cquint@ppnne.org'; 'cbarstow@gmail.com'; 'daleh@mmta.com'; 'daveb@psouth.net'; 'diamondhollyd@aol.com'; 'diamonhollyd@aol.com'; 'dkingbar@aol.com'; 'dogsrule@tds.net'; 'dparent1999@yahoo.com'; 'drron@elmcitymed.com'; 'dsdamon@panax.com'; 'dwalker@preti.com'; 'dwilby@iepm.org'; 'edie@wscg.net'; 'emily.m.davis@maine.edu'; 'epmccull@colby.edu'; 'evergreenmountain@gmail.com'; 'faith@churchoftheblessedfaith.com'; 'farns@gwi.net'; 'fedupwithtaxes@gmail.com'; 'feministjo@roadrunner.com'; 'finance@mainechamber.org'; 'geoff.keller@lpme.org'; 'gpl108@comcast.net'; 'hdbikerlady60@yahoo.com'; 'homebuilders@prexar.com'; 'hshields@jaretcohn.com'; 'info@casinosno.org'; 'info@hbrame.org'; 'info@mainedo.org'; 'info@maineinns.com'; 'info@mainerestaurant.com'; 'info@medental.org'; 'info@protectmainepatients.org'; 'ironw496@verizon.net'; 'iw496@verizon.net'; 'jack@linnehans.com'; 'jaime@meoil.com'; 'jalfond@aol.com'; 'jbutts@agcmaine.org'; 'jconn10471@aol.com'; 'jcsproule@roadrunner.com'; 'jeffromano@adelphia.net'; 'jepl@fairpoint.net'; 'jesse@mainepeoplesalliance.org'; 'jgpope@aol.com'; 'jim.fernald@brookingsmith.com'; 'jim-prehung@roadrunner.com'; 'jnapoli2@maine.rr.com'; 'jnutting@verrilldana.com';



RECEIVED

JUN 13 2008

MAINE ETHICS COMMISSION

June 10, 2008

Mr. Jeremy Brown
PAC, Party and Lobbyist Registrar
State of Maine Commission on Governmental Ethics and Election Practices
State House Station 135
Augusta, Maine 04333-0135

Dear Jeremy:

I am in receipt of your letter of June 3, 2008 notifying us of our penalty for filing the Build Maine PAC report late. I want to thank you for taking the time and patience on the phone with me to hear our side of the story and to explain to me the reasons for the determination. Unfortunately, we feel the \$903 penalty is quite excessive, not fitting of the infraction, and would appreciate the opportunity to appear before the Commission at the next regularly scheduled meeting to appeal the determination.

First of all, we do not dispute the late filing. Our PAC report was due Friday, May 30, and we didn't catch our oversight until Monday, June 2. If there are any mitigating circumstances, it is because our normal systems for reminding us to file did not work. We have been sending in our reports consistently since 2002, and with one or two exceptions over that period, we have been on time. In recent years, we had come to rely on your predecessor, Martha Currier-Demeritt's email notifications, which we received right up to the day of the deadline to keep us on track, and we had also established an internal electronic reminder system. For some reason, with the latest May 30th deadline, both of those systems did not work for us. You said you sent out an email reminder to both our Office Manager and me on May 22, but neither of us directly received them, most likely because our spam filter did not recognize your email address. Since we delete all messages in our spam file on a weekly basis, we can not go back and confirm receipt or non-receipt of your email. And since we did not receive any notifications either the day before or the day of the deadline (as we had in the past), and our internal reminder system did not activate, May 30 passed just like any other day and we did not realize we had missed the deadline. We understand completely you are under no statutory obligation to send out reminders; however, we have in fact appreciated and relied on them over the years. It appears to us, now, that we had developed an over-reliance on them.

Regarding the penalty, I understand that the law requires you to calculate it according to the formula set in statute, and that it is based on a percentage of the amount reported and the number of days late. Compared to amounts that we have raised in the past, the receipts we reported this cycle were unusual, higher perhaps than any cycle in the past. That dynamic, combined with the fact that we were three calendar days late, conspired to result in what we consider an excessive penalty for filing three calendar days late.

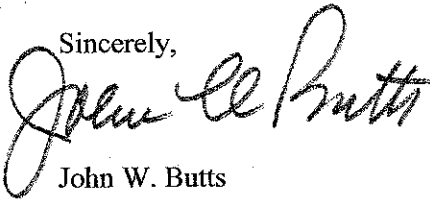
While we realize the law says calendar days, we feel we got caught in an unusual circumstance. The PAC reporting deadlines are set by date, not day, and therefore the chance that they would occur on a Friday when most offices are closed the next two days and there is little chance of discovering a late filing until Monday is not typical. So, under a literal reading of the law, we were three days late; however, realistically, we feel we were one day late because we did not have a reasonable chance of catching our oversight until the next working day, Monday.

In summary, we feel we do not deserve the penalty assessed, and would request that it be waived or at least reduced, for the following reasons:

- We have a good record of filing our PAC reports on time, over a 6-year period;
- We were caught in the unusual situation of being late on a Friday and not catching it until the next working day, Monday, thus resulting in the three-calendar day penalty.
- The penalty formula partially accounts for the amount of contributions raised (the more contributions reported, the higher the penalty) and we had an unusually high level of contributions compared to past experience;
- While we take responsibility for making sure our internal reminder systems are reliable, we do feel that a change of personnel at the Ethics Commission combined with our reliance on notifications from your office up to and including the date of the deadline were the primary causes of our lateness. That is not to say that the ultimate responsibility for filing on time lies with anyone but the filer; it is simply an observation that we should not have relied on external reminders from the Ethics Commission. While we have recognized this and have set up an internal reminder system to make sure, unfortunately, in this case, neither worked for us. We consider these mitigating circumstances, and hope you will agree.

Again, I appreciate the time you have taken to listen to our case. I look forward to attending the next Ethics Commission meeting and having the opportunity to discuss this matter personally.

Sincerely,

A handwritten signature in cursive script, reading "John W. Butts".

John W. Butts
Executive Director

JWB:s

STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

June 3, 2008

Mr. John W. Butts
Treasurer
Build Maine PAC
P.O. Box 5519
Augusta, ME 04332-5519

Re: Campaign Finance Report Late Filing

Dear Mr. Butts:

Our records show that the 11-Day Pre Primary campaign finance report for the above mentioned PAC was filed on June 2, 2008. This report was due no later than 11:59 P.M. on May 30, 2008. Penalties for late PAC reports are based on the amount of financial activity during the filing period, the number of calendar days a report is filed late, and the PAC's filing history (21-A M.R.S.A. § 1062-A). A penalty of no more than \$100 may also be assessed for late reports covering periods in which the PAC had no financial activity (21-A M.R.S.A. § 1004-A).

Pursuant to the statutory formula prescribed in 21-A M.R.S.A. § 1062-A, the Commission has assessed a preliminary penalty of **\$903.00** for the late filing of this report. Please see the enclosed penalty matrix for more information on how this penalty was calculated.

If you believe you have a valid reason for filing late, you may request that the Commission make a final penalty determination. Any request for a Commission determination must be made within 10 calendar days of receiving this notice, beginning the day you sign for receipt. Upon receipt of your request for a Commission determination, we will schedule you to appear before the Commission at the next regularly scheduled meeting. You may appear before the Commission personally, designate a representative to appear on your behalf, or submit a written statement in which you provide an explanation of the mitigating circumstances you wish the Commission to take into consideration. The Commission will notify you of the disposition of your case shortly after its determination.

Please direct any questions you may have about this matter to me at 287-6221.

Sincerely,



Jeremy J. Brown
PAC, Party & Lobbyist Registrar

Enclosure (2)

COMMISSION ON GOVERNMENTAL ETHICS AND ELECTION PRACTICES

PENALTY MATRIX FOR LATE POLITICAL ACTION COMMITTEE REPORT FILINGS

BASIS FOR PENALTIES

21-A M.R.S.A. Section 1062-A

The penalty for filing a required report late is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days the report is filed late, as follows:

- For the first violation, 1%
- For the second violation, 3%
- For the third and each subsequent violation, 5%

Example: The treasurer files the PAC's report two (2) calendar days late. The PAC has not had any previous late filings in the past 2 years. The PAC reports a total of \$2,500 in contributions and \$1,500 in expenditures for the filing period. The penalty is calculated as follows:

\$2,500 Greater of the amount of total contributions received or expenditures made during the filing period.

X .01 Percent prescribed for first violation

\$25.00 One percent of total contributions

x 2 Number of calendar days late

\$50.00 Total penalty Commission may assess

Your penalty is calculated as follows:

Contributions/Expenditures \$ 30,100

Percent prescribed: x .01

\$ 301⁰⁰

Number of days late: x 3

Total penalty accrued: \$ 903⁰⁰

A penalty begins to accrue at 11:59 p.m. on the day the report is due.

Any penalty of less than \$5 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each even-numbered year. Waiver of a penalty does not nullify the finding of a violation.

Title 21-A M.R.S.A. Section 1004-A(1) states the Commission may assess a penalty of no more than \$100 when a person files a late campaign finance report containing no contributions or expenditures.

MAXIMUM PENALTIES

21-A M.R.S.A. Section 1062-A (4)

\$10,000 for 6-day pre-election reports, 42-day post-election reports, and 24-Hour reports;
\$5,000 for quarterly reports.

21-A §1062-A. Failure to file on time

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21-A §1062-A. Failure to file on time

1. Registration. A political action committee required to register under section 1053 that fails to do so in accordance with section 1053 or that fails to provide the information required by the commission for registration may be assessed a forfeiture of \$250.

[1995, c. 483, §21 (NEW) .]

2. Campaign finance reports. A campaign finance report is not timely filed unless a properly signed or electronically submitted copy of the report, substantially conforming to the disclosure requirements of this subchapter, is received by the commission by 11:59 p.m. on the date it is due. Except as provided in subsection 6, the commission shall determine whether a required report satisfies the requirements for timely filing. The commission may waive a penalty if it is disproportionate to the level of experience of the person filing the report or to the harm suffered by the public from the late disclosure. The commission may waive the penalty in whole or in part if the commission determines the failure to file a timely report was due to mitigating circumstances. For purposes of this section, "mitigating circumstances" means:

A. A valid emergency of the committee treasurer determined by the commission, in the interest of the sound administration of justice, to warrant the waiver of the penalty in whole or in part; [1999, c. 729, §9 (AMD) .]

B. An error by the commission staff; or [1999, c. 729, §9 (AMD) .]

C. Other circumstances determined by the commission that warrant mitigation of the penalty, based upon relevant evidence presented that a bona fide effort was made to file the report in accordance with the statutory requirements, including, but not limited to, unexplained delays in postal service or interruptions in Internet service. [2007, c. 443, Pt. A, §38 (AMD) .]

[2007, c. 443, Pt. A, §38 (AMD) .]

3. Basis for penalties. The penalty for late filing of a report required under this subchapter is a percentage of the total contributions or expenditures for the filing period, whichever is greater, multiplied by the number of calendar days late, as follows:

A. For the first violation, 1%; [1995, c. 483, §21 (NEW) .]

B. For the 2nd violation, 3%; and [1995, c. 483, §21 (NEW) .]

C. For the 3rd and subsequent violations, 5%. [1995, c. 483, §21 (NEW) .]

Any penalty of less than \$10 is waived.

Violations accumulate on reports with filing deadlines in a 2-year period that begins on January 1st of each

even-numbered calendar year. Waiver of a penalty does not nullify the finding of a violation.

A report required to be filed under this subchapter that is sent by certified or registered United States mail and postmarked at least 2 days before the deadline is not subject to penalty.

A required report may be provisionally filed by transmission of a facsimile copy of the duly executed report to the commission, as long as an original of the same report is received by the commission within 5 calendar days thereafter.

[2007, c. 443, Pt. A, §39 (AMD) .]

4. Maximum penalties. The maximum penalties under this subchapter are \$10,000 for reports required under section 1059, subsection 2, paragraphs B, C and E and \$5,000 for reports required under section 1059, subsection 2, paragraph A.

[1995, c. 483, §21 (NEW) .]

5. Request for a commission determination. Within 3 days following the filing deadline, a notice must be forwarded to the principal officer and treasurer of the political action committee whose report is not received by 11:59 p.m. on the deadline date, informing them of the basis for calculating penalties under subsection 3 and providing them with an opportunity to request a commission determination. The notice must be sent by certified United States mail. A request for determination must be made within 10 calendar days of receipt of the commission's notice. The 10-day period during which a determination may be requested begins on the day a recipient signs for the certified mail notice of the proposed penalty. If the certified letter is refused or left unclaimed at the post office, the 10-day period begins on the day the post office indicates it has given first notice of a certified letter. A principal officer or treasurer requesting a determination may either appear in person or designate a representative to appear on the principal officer's or treasurer's behalf or submit a notarized written explanation of the mitigating circumstances for consideration by the commission.

[2007, c. 443, Pt. A, §40 (AMD) .]

6. Final notice of penalty. After a commission meeting, notice of the final determination of the commission and the penalty, if any, imposed pursuant to this subchapter must be sent to the principal officer and the treasurer of the political action committee.

If no determination is requested, the commission staff shall calculate the penalty based on the provision of subsection 3 and shall mail final notice of the penalty to the principal officer and to the treasurer of the political action committee. A detailed summary of all notices must be provided to the commission.

[1999, c. 426, §34 (AMD) .]

7. List of late-filing committees. The commission shall prepare a list of the names of political action committees that are late in filing a report required under section 1059, subsection 2, paragraph B, subparagraph (1) or section 1059, subsection 2, paragraph C or D within 30 days of the date of the election and shall make that list available for public inspection.

[2007, c. 443, Pt. A, §41 (AMD) .]

8. Failure to file. A person who fails to file a report as required by this subchapter within 30 days of the filing deadline is guilty of a Class E crime, except that, if a penalty pursuant to subsection 8-A is assessed and collected by the commission, the State may not prosecute a violation under this subsection.

[2003, c. 628, Pt. A, §8 (AMD) .]

8-A. Penalties for failure to file report. The maximum penalty for failure to file a report required under section 1059, subsection 2, paragraph B, C or E is \$10,000. The maximum penalty for failure to file a report required under section 1059, subsection 2, paragraph A is \$5,000.

[2003, c. 628, Pt. A, §9 (NEW) .]

9. Enforcement. The commission staff has the responsibility for collecting the full amount of any penalty and has all necessary powers to carry out this responsibility. Failure to pay the full amount of any penalty levied under this subchapter is a civil violation by the political action committee and its treasurer. Thirty days after issuing the notice of penalty, the commission shall report to the Attorney General the name of any political action committee, along with the name of its treasurer, that has failed to pay the full amount of any penalty. The Attorney General shall enforce the violation in a civil action to collect the full outstanding amount of the penalty. This action must be brought in the Superior Court for Kennebec County or the District Court, 7th District, Division of Southern Kennebec.

[1999, c. 426, §34 (AMD) .]

SECTION HISTORY

1995, c. 483, §21 (NEW). 1999, c. 426, §34 (AMD). 1999, c. 729, §9 (AMD). 2003, c. 628, §§A7-9 (AMD). 2007, c. 443, Pt. A, §§38-41 (AMD).